



March 29, 2017

Reese Goldsmith, Citizen Suit Coordinator  
Environment & Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

Re: Los Angeles Waterkeeper v. Belly Foundry Co. (Case No: 2:16-cv-07389-JFW-PJW)

Dear Ms. Goldsmith,

This letter is intended to provide assurance that I have received the proposed Consent Decree and Order between Los Angeles Waterkeeper and Belly Foundry Co. and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from Belly Foundry Co. as specified in Consent Decree and Order.
- 2) The Rose Foundation shall only use these Belly Foundry Co. funds for a project related to water quality designed to analyze, reduce, prevent, or otherwise mitigate the ecological and/or health effects of stormwater and/or non-stormwater discharges into Los Angeles area waterbodies.
- 3) After the funds are disbursed, the Rose Foundation shall send a report to the Justice Department, the Court and the Parties setting forth the recipient and purpose of the funds and demonstrating conformance with the nexus of the Consent Decree and Order.

**Rose Foundation for Communities and the Environment**

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Foundation does not support political lobbying activities prohibited by Section 501(c)(3) of the IRS Code.
- Work directly in schools and in the community to encourage environmental stewardship and civic participation.

- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

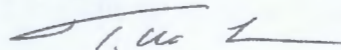
Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Levy and Powers are posted on the Foundation's website [www.rosefdn.org](http://www.rosefdn.org).

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or [tlittle@rosefdn.org](mailto:tlittle@rosefdn.org).

Sincerely,



Tim Little, Executive Director



APR 04 2017

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18 Attorneys for Defendant BELL FOUNDRY CO.

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21

22 LOS ANGELES WATERKEEPER, a  
non-profit corporation,

23 Plaintiff,

24 v.

25 BELL FOUNDRY CO., a corporation;  
26 DOES 1 through 10,

27 Defendants.  
28

Case No. 2:16-cv-07389-JFW-PJW

**JOINT NOTICE OF SETTLEMENT  
AND REQUEST TO SET OSC RE:  
[PROPOSED] CONSENT DECREE  
[PROPOSED] ORDER SUBMITTED  
HEREWITH**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

1 TO THE HONORABLE COURT:

2 Plaintiff Los Angeles Waterkeeper ("Plaintiff") and Defendant Bell Foundry  
3 Co. ("Defendant") have reached settlement of all claims in this action and have  
4 agreed to language of a [Proposed] Consent Decree, attached hereto as Exhibit A.  
5 The settlement is contingent upon (i) expiration of the 45-day agency review period  
6 as required by the federal Clean Water Act, and (ii) entry of the [Proposed] Consent  
7 Decree by the Court.

8 In accordance with the federal Clean Water Act, no order disposing of this  
9 action may be entered prior to 45 days following receipt of the [Proposed] Consent  
10 Decree by the relevant federal agencies, including the United States Department of  
11 Justice and the National and Region IX offices of the United States Environmental  
12 Protection Agency.<sup>1</sup> The parties are providing copies of the [Proposed] Consent  
13 Decree to the federal regulatory agencies concurrently with the filing of this Notice.  
14 The federal regulatory agencies' review period will end on or about May 15, 2017.  
15 If any of the reviewing agencies object to the [Proposed] Consent Decree, the  
16 parties will require additional time to meet and confer to attempt to resolve any  
17 concerns raised by those agencies.

18 Consequently, and for good cause appearing, the parties respectfully request  
19 that the Court set May 21, 2017 or as soon thereafter as is convenient for the Court  
20 as a date for an Order to Show Cause re: Entry of the [Proposed] Consent Decree.  
21 The parties stipulate and agree that all other deadlines and hearings in this matter,  
22 including those related to Rule 26 and the April 24, 2017 Scheduling Conference,  
23 can be vacated.

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> See 33 U.S.C. § 1365(c) ("No consent judgment shall be entered in an action in which  
27 the United States is not a party prior to 45-days following the receipt of a copy of the  
28 proposed consent judgment by the Attorney General and the Administrator."); *see also*  
40 C.F.R. § 135.5 (requiring the parties to provide notice to the Court of the 45-day agency  
review period under 33 U.S.C. § 1365(c)).

1 A [Proposed] Order is submitted herewith.

2  
3 DATED: March 30, 2017

LAW OFFICE OF GIDEON KRACOV

4  
5   
Gideon Kracov

6 Attorneys for Plaintiff  
7 LOS ANGELES WATERKEEPER

8 DATED: March 30, 2017

9 CASTELLON & FUNDERBURK LLP

10   
William W. Funderburk, Jr.

11 Attorneys for Defendant  
12 BELL FOUNDRY CO.

13 Pursuant to Local Rule 5-4.3.4, the filer of this document attests that all of the  
14 signatories listed, and on whose behalf the filing is submitted, concur in the filing's  
15 content and have authorized the filing.





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27 Attorneys for Defendant BELL FOUNDRY CO.

28 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES WATERKEEPER, a non-  
profit corporation,  
Plaintiff,  
vs.

BELL FOUNDRY CO. a corporation,  
Defendant.

Case No.: 2:16-cv-07389-JFW-PJW

**[PROPOSED] CONSENT DECREE  
AND ORDER**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*)**

Judge: John F. Walter

1       **WHEREAS**, Los Angeles Waterkeeper (“Waterkeeper”) is a 501(c)(3) non-  
2 profit public benefit corporation organized under the laws of the State of  
3 California, with its main office in Santa Monica, California.

4       **WHEREAS**, Waterkeeper is dedicated to the preservation, protection and  
5 defense of the surface, ground, coastal and ocean waters of Los Angeles County  
6 from all sources of pollution and degradation;

7       **WHEREAS**, the Bell Foundry Co. facility is located at 5310 and 5311  
8 Southern Avenue, South Gate, California (“Bell Facility” or “Facility”).

9       **WHEREAS**, the Facility is owned and/or operated by Bell Foundry Co., a  
10 California corporation (“Defendant” or “Bell Foundry”);

11       **WHEREAS**, on May 17, 2016, Waterkeeper sent a sixty (60) day notice  
12 letter (“Notice Letter”) to Defendant, the United States Environmental Protection  
13 Agency (“EPA”), EPA Region IX, California’s State Water Resources Control  
14 Board (“State Board”) and the Regional Water Quality Control Board (“Regional  
15 Board”), stating its intent to file suit for violations of the Federal Water Pollution  
16 Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act” or “CWA”). The  
17 Notice Letter alleged violations of the Clean Water Act for Defendant’s alleged  
18 discharges of pollutants into storm drains and receiving waters, including the Los  
19 Angeles River (“River”) and ultimately the Pacific Ocean, in alleged violation of  
20 National Pollution Discharge Elimination System (“NPDES”) General Permit No.  
21 CAS000001 [State Board] Water Quality Order No. 97-03-DWQ (“1997 Permit”),  
22 as superseded by Order No. 2014-0057-DWQ (“2014 Permit”). The 1997 Permit  
23 and/or 2014 Permit may be referred to generically as the “Storm Water Permit”;

24       **WHEREAS**, on October 2, 2016 Waterkeeper filed a complaint  
25 (“Complaint”) against Defendant in the United States District Court, Central  
26 District of California (Case No. 2:16-cv-07389 JFW-PJW), entitled *Los Angeles*  
27 *Waterkeeper v. Bell Foundry Co.*  
28



1       **WHEREAS**, the Defendant denies all allegations of the Complaint and  
2 Notice Letter;

3       **WHEREAS**, Plaintiff and Defendant (collectively referred to herein as the  
4 “Settling Parties” or “Parties”) agree that it is in the Parties’ mutual interest to  
5 enter into a Consent Decree setting forth terms and conditions appropriate to  
6 resolving the allegations set forth in the Complaint without further proceedings;

7       **WHEREAS**, all actions taken by the Defendant pursuant to this Consent  
8 Decree shall be made in compliance with all applicable federal, state and local  
9 rules and regulations;

10       **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
11 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT**  
12 **AS FOLLOWS:**

13       1.     The Court has jurisdiction over the subject matter of this action  
14 pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

15       2.     Venue is appropriate in the Central District Court pursuant to Section  
16 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the  
17 alleged violations took place is located within this District;

18       3.     The Complaint states a claim upon which relief may be granted  
19 against Defendant pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

20       4.     Waterkeeper has standing to bring this action;

21       5.     The Court shall retain jurisdiction over this matter for purposes of  
22 interpreting, modifying or enforcing the terms of this Consent Decree, or for as  
23 long thereafter as is necessary for the Court to resolve any motion to enforce this  
24 Consent Decree.

25 **I.     OBJECTIVES**

26       6.     It is the express purpose of the Parties entering into this Consent  
27 Decree to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§  
28

1 1251, *et seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint.  
2 In light of these objectives and as set forth fully below, Defendant agrees, *inter*  
3 *alia*, to comply with the provisions of this Consent Decree, and to comply with the  
4 requirements of the Storm Water Permit and all applicable provisions of the CWA.  
5 Specifically, Receiving Water Limitations A, B and C at Section VI of the 2014  
6 Permit, and Effluent Limitations A, B and C at Section V of the 2014 Permit,  
7 which requires, *inter alia*, that Defendant develop and implement Best  
8 Management Practices (“BMPs”) designed to achieve Best Available Technology  
9 (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”). Bell  
10 Foundry Co. shall develop and implement BMPs necessary to comply with the  
11 2014 Permit (or subsequently adopted Storm Water Permit) requirement to achieve  
12 compliance with BAT/BCT standards and with applicable Water Quality  
13 Standards (“WQS”) including, *inter alia*, standards outlined in the “Water Quality  
14 Control Plan—Los Angeles Region: Basin Plan for Coastal Watersheds of Los  
15 Angeles and Ventura County” (“Basin Plan”) and those contained in 40 C.F.R. §  
16 131.38 (“California Toxics Rule”). BMPs must be developed and implemented to  
17 prevent discharges or to reduce contamination in storm water discharged from the  
18 Facility sufficient to achieve the numeric limits detailed in Table 1 at paragraph 21  
19 below of this Consent Decree.

## 20 **II. EFFECTIVE DATE AND TERMINATION**

21 7. The term “Effective Date,” as used in this Consent Decree, shall mean  
22 the last day for the United States Department of Justice and the United States  
23 Environmental Protection Agency (collectively “Federal Agencies”) to comment  
24 on the Consent Decree, i.e., the 45th day following the Federal Agencies’ receipt  
25 of the Consent Decree, or the date on which the Federal Agencies provide notice  
26 that they require no further review, and the Court enters the final Consent Decree.

27 8. This Consent Decree will terminate 3 years from the Effective Date  
28



1 (“Termination Date”) unless there is a prior ongoing, unresolved dispute regarding  
2 Defendant’s compliance with its terms. Should there be such a dispute,  
3 Waterkeeper shall file a Notice of Dispute with the Court prior to the Termination  
4 Date, which shall identify the issue in dispute. The filing of such a Notice of  
5 Dispute shall extend the Termination Date until the Court determines the dispute  
6 has been resolved and thereupon dismisses the case, or, alternatively, if the  
7 Settling Parties file a stipulation for dismissal.

8 9. Bell Foundry may move the Court to terminate the Consent Decree at  
9 any time provided that the following conditions are satisfied:

- 10 a. Defendant has fully implemented all measures detailed in  
11 paragraph 15 below;
- 12 b. Defendant has revised and fully implemented a Storm Water  
13 Pollution Prevention Plan (“SWPPP”) and Monitoring and  
14 Reporting Program (“M&RP”) pursuant to the requirements of  
15 this Consent Decree and the Storm Water Permit;
- 16 c. There are no ongoing, unresolved disputes regarding  
17 Defendant’s compliance with this Consent Decree, including  
18 but not limited to disputes related to the payment of fees/costs,  
19 Supplemental Environmental Project (“SEP”) implementation,  
20 compliance monitoring fees, implementation of storm water  
21 and non-storm water control BMPs, and compliance with  
22 numeric limits in Table 1;
- 23 d. All payments required under paragraphs 41 through 45 of this  
24 Consent Decree are made; and
- 25 e. Beginning with the 2017-18 Monitoring Period, monitoring  
26 data from four (4) consecutive storm water samples collected at  
27 each industrial discharge point demonstrate compliance with  
28



1 the numeric limits in Table 1.

2 10. To terminate early as provided above, Defendant shall file a motion  
3 for early termination with the Court. Defendant shall provide Plaintiff and its  
4 counsel with written notice at least thirty (30) days prior to filing any motion for  
5 termination of the Consent Decree.

6 11. Upon receipt of the written request to terminate, Waterkeeper may  
7 conduct an inspection of the Facility within thirty (30) calendar days and Bell  
8 Foundry will work with Waterkeeper to schedule and accommodate the inspection,  
9 if requested, within the 30-day period. The inspection will be conducted according  
10 to the rules applicable to Annual Site Inspections in paragraph 38 below. Unless  
11 there is an ongoing, unresolved dispute regarding Defendant's compliance with  
12 this Consent Decree, sixty (60) calendar days after written notice was given,  
13 Defendant may move the Court to terminate the Consent Decree and Waterkeeper  
14 shall not oppose the motion.

15 **III. COMMITMENTS OF THE PARTIES**

16 **A. Industrial Storm Water Pollution Control Measures**

17 12. To ensure there are no unauthorized non-stormwater discharges, any  
18 non-stormwater discharges from the Facility not authorized by the Storm Water  
19 Permit shall be considered a breach of this Consent Decree.

20 13. All storm water pollution measures required by this Consent Decree  
21 will be implemented at the Facility. Any disputes over the adequacy and/or timing  
22 of the implementation of BMPs shall be resolved pursuant to the force majeure (if  
23 applicable) and/or dispute resolution provisions of this Consent Decree, set out in  
24 Section IV below.

25 14. Compliance Standard. The storm water pollution control measures  
26 required by this Consent Decree shall be designed to comply with the design storm  
27 standard for treatment control BMPs set forth in Section X(H)(6) of the 2014  
28

1 Permit ("Compliance Standard") based on historical rainfall measured at the South  
 2 Gate Transfer Station (Gauge 1256Z) located at 9530 Garfield Avenue, South  
 3 Gate, California 90280. The storm water pollution control measures agreed to  
 4 under this Consent Decree shall be operated throughout the entire year. For  
 5 purposes of this Consent Decree, properly documented discharges of storm water  
 6 and/or storm water pollutants from the Facility in connection with rainfall events  
 7 that exceed the Compliance Standard are not a violation of this Consent Decree  
 8 and are not subject to requirement to meet Table 1 Numeric Limits.

9 15. BMP Plan. Bell has implemented the following BMPs at the areas  
 10 identified in the site map attached as Exhibit A hereto:

- 11 a. Remove surplus and excess equipment from the storage area in discharge  
area 1;
- 12 b. Remove approximately 40 tons of dirt that had accumulated on the  
13 asphalt in storage area 1;
- 14 c. Install concrete diversion berm to control flow from storage area 1;
- 15 d. Paint the buildings located in the oil storage area, forklift and  
maintenance area and the aluminum foundry;
- 16 e. Install Ultra Filter Sock HMRM 1.0 heavy metal remover at Outfall 1;
- 17 f. Install Ultra Filter Sock sediment remover at Outfalls 1 and 2;
- 18 g. Install inlet guard drain filter sediment remover at Outfalls 1 and 2;
- 19 h. Purchase portable covers for materials stored outside the Aluminum  
Foundry;
- 20 i. Remove, and will continue to remove, surplus storage racks and other  
production pieces;
- 21 j. Repair walls in rear of building 1 by railroad to prevent the discharge of  
industrial materials;
- 22 k. Repair water tanks/cooling towers;
- 23 l. Install downspout diversion from building 3;
- 24 m. Paint bins located in the truck parking area;
- 25 n. Build new baghouse collection bins;
- 26 o. Fix large crack that was close to the buildings near outfall 1 and 2; and
- 27 p. Clean area behind building 1 and placed rock under downspouts to  
28 prevent erosion

16. Bell shall update its SWPPP and M&RP to reflect that the drainage



1 areas that discharge to outfalls 3 and 4 have no exposure to industrial activities and  
2 materials in accordance with Section XVII of the 2014 Permit. Bell shall include  
3 in its SWPPP an NEC Checklist and a certification statement demonstrating that  
4 outfalls 3 and 4 of the Facility have been evaluated and that industrial materials or  
5 activities (as defined in the 2014 Permit) are not and will not be in the foreseeable  
6 future exposed to precipitation.

7 17. Bell shall monitor and contemporaneously document storm water flow  
8 and potential discharge from the railroad tracks right-of-way on its sampling event  
9 visual observation forms required pursuant to the 2014 General Permit. In the  
10 event that discharges occur from the railroad tracks right-of-way, Bell shall sample  
11 and analyze any such discharges. If a discharge from this area is confirmed, Bell  
12 shall develop a set of BMPs consistent with the 2014 General Permit, incorporate  
13 such BMPs into an amended SWPPP, add this discharge as outfall 5 to its M&RP,  
14 and implement any BMPs as soon as practicable and by no later than Oct. 1, 2017.

15 18. In addition to Bell's current sweeping program, Bell will lease a  
16 monthly regenerative sweeper service after the Effective Date. Bell may cease  
17 leasing the monthly regenerative sweeper service after a treatment system has been  
18 fully implemented at the Facility. In the event a treatment system has been fully  
19 implemented at the Facility in compliance with this Consent Decree, Bell shall  
20 develop in its SWPPP, and implement at the Facility, a revised sweeping BMP  
21 program.

22 19. During the 2016-17 Monitoring Period, Bell shall determine flow  
23 rates and volume capacities in sufficient detail to allow the design, permitting and  
24 implementation of a treatment system per the terms of this Consent Decree.

25 20. The BMP Plan described in paragraph 15 above shall be completely  
26 implemented and functioning at the Facility no later than two (2) months after the  
27 Effective Date.



**B. Numeric Limits**

**21. Numeric Limits for Storm Water Discharges.**

**Table 1. Numeric Limits**

Contaminant	Numeric Limit
Total Suspended Solids	100 mg/L
pH	6.0-9.0 S.U.
Chemical Oxygen Demand (COD)	120 mg/L
Oil and Grease	15 mg/L
Copper	0.013 mg/L*
Zinc	0.120 mg/L*
Aluminum	0.75 mg/L
Iron	1.00 mg/L

NOTE: An \* next to a Numeric Limit denotes a CTR Limit. Compliance with CTR based Numeric Limits for metals will be based on an evaluation of dissolved concentrations only.

**22. Action Plan for Table 1 Exceedances during the Consent Decree.** For all Monitoring Periods<sup>1</sup> during the term of the Consent Decree, beginning with the 2017-2018 Monitoring Period, during which analyses of storm water samples collected over the Monitoring Period demonstrates an exceedance of any parameters detailed in Table 1, Bell shall prepare and submit a plan for reducing and/or eliminating the discharge of pollutants ("Action Plan") to Waterkeeper by July 30 (following the Monitoring Period in which the exceedances giving rise to the obligation to submit an Action Plan occurred). In the event that a treatment system is installed, Bell Foundry shall only be required to submit an action plan if sample analysis demonstrates 2 or more exceedances of any single parameter of the numeric limits in Table 1, or any single exceedance of more than two times.

**23. Action Plan Requirements.** Each Action Plan submitted shall be in writing and shall include at a minimum: (1) the identification of the pollutant(s)

<sup>1</sup> The Monitoring Period is defined as from July 1 – June 30.



1 exceeding Table 1's numeric limit, (2) an assessment of the source(s) of each  
2 exceedance, (3) the identification of additional BMPs that will be implemented to  
3 achieve compliance with the relevant numeric limit(s) and (4) time schedules for  
4 implementation of the proposed BMPs. The Action Plan may also propose  
5 alternative assessments of compliance on a mass loading basis or alternative means  
6 of compliance with the TMDLs that may be established by the State Water Board.

7 24. Action Plan Review. Waterkeeper shall have 30 days upon receipt of  
8 Defendant's Action Plan to provide Defendant with comments. Within 30 days  
9 from the date Waterkeeper comments on Defendant's Action Plan, Defendant shall  
10 provide Waterkeeper with a written explanation if Defendant refuses to develop  
11 and/or implement any of Waterkeeper's recommended additional BMPs. Any  
12 disputes as to the adequacy of the Action Plan shall be resolved pursuant to the  
13 dispute resolution provisions in Section IV of this Consent Decree.

14 25. If any structural BMPs require any government agency approval, then  
15 Defendant shall contact Waterkeeper to request an extension of the deadline, if  
16 necessary, to implement the structural BMPs requiring agency approval.  
17 Waterkeeper's consent to Defendant's requested extension shall not be  
18 unreasonably withheld.

19 26. Defendant shall have until October 1 (following the Monitoring  
20 Period in which the exceedances giving rise to the obligation to submit an Action  
21 Plan occurred) to implement the Action Plan. Defendant shall notify Waterkeeper  
22 in writing when the Action Plan has been implemented.

23 27. If sampling during the 2016-2017 Wet Season demonstrates 1) three  
24 or more exceedances of Numeric Limits in Table 1 or 2) one or more exceedances  
25 of any parameter by more than two times Numeric Limits in Table 1, Defendant  
26 shall design and begin construction of a treatment system that is sized pursuant to  
27 the Compliance Standard in paragraph 14. The treatment system shall be  
28

1 implemented and functioning as soon as practicable, but no later than October 1,  
2 2017 (subject to any delays addressed in paragraph 28).

3 28. If the treatment system requires any government agency approval,  
4 then Defendant shall contact Waterkeeper to request an extension of the deadline,  
5 if necessary, to implement the activity requiring agency approval. Waterkeeper's  
6 consent to Defendant's requested extension shall not be unreasonably withheld.

7 **C. Sampling and Monitoring at the Facility**

8 29. Sample Analysis and Sample Frequency. The Defendant shall collect  
9 storm water samples from each industrial discharge location in the event that  
10 discharges occur at the Facility during scheduled operating hours from at least four  
11 (4) qualifying storm events pursuant to the 2014 Permit. The Defendant shall  
12 analyze samples collected for the constituents identified in Table 1, as well as such  
13 additional constituents required by the 2014 Permit. Defendant shall use a state  
14 certified laboratory to conduct all analysis pursuant to this Consent Decree. The  
15 Defendant shall select laboratories and analytical limits such that, at a minimum,  
16 the method detection limits are below the numeric limits in Table 1.

17 30. Defendant shall notify Waterkeeper when it uploads an ad hoc  
18 sampling report to the SMARTS system.

19 31. Revising the M&RP. Within thirty (30) calendar days of the Effective  
20 Date of this Consent Decree, Defendant shall revise its Monitoring and Reporting  
21 Program ("M&RP") for the Facility to incorporate the storm water discharge  
22 requirements of this Consent Decree and the Storm Water Permit. The revised  
23 M&RP shall require that the samples taken from the Facility's storm water  
24 discharges pursuant to the Storm Water Permit are analyzed for the constituents  
25 identified in Table 1 in addition to any other constituents required by the Storm  
26 Water Permit. The Defendant shall submit the revised M&RP to Waterkeeper for  
27 review and comment as soon as it is completed but in any event no later than thirty  
28



(30) calendar days of the Effective Date. Waterkeeper shall provide comments, if any, to the Defendant within thirty (30) calendar days of receipt of the revised M&RP. The Defendant shall incorporate Plaintiff's comments into the M&RP, or shall justify in writing why any comment is not incorporated within thirty (30) calendar days of receiving comments. Any disputes over the adequacy of the revised M&RP shall be resolved pursuant to the dispute resolution provisions in Section IV of this Consent Decree.

**D. Storm Water Pollution Prevention Plan**

32. SWPPP Revisions. Within thirty (30) calendar days of the Effective Date of this Consent Decree, Defendant shall revise the SWPPP to identify (1) current BMPs, (2) BMPs developed pursuant to this Consent Decree to control the discharge of pollutants from the Facility, (3) a description of all industrial activities, (4) corresponding potential pollutant sources for industrial activities, and (5) a description of the potential pollutants from each source. The Defendant shall submit the revised SWPPP to Waterkeeper for review and comment as soon as it is completed, but in any event no later than thirty (30) calendar days of the Effective Date. Waterkeeper shall provide comments, if any, to Defendant within thirty (30) calendar days of receipt of the SWPPP. Defendant shall incorporate Plaintiff's comments into the SWPPP, or shall justify in writing why any comment is not incorporated within thirty (30) calendar days of receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be resolved pursuant to the dispute resolution provisions in Section IV off this Consent Decree.

**E. Employee Training**

33. Within thirty (30) calendar days of the Effective Date, Defendant shall develop a training program, including any training materials, as necessary, for effective implementation of the training program ("Training Program").

34. The Training Program shall ensure (a) that there are a sufficient

1 number of employees delegated to achieve compliance with the Storm Water  
2 Permit and this Consent Decree, and (b) that these employees are properly trained  
3 to perform the required compliance activities. Such Training Program shall be  
4 specified in the SWPPP.

5 35. The Training Program shall require specific training to include at least  
6 the following:

7 a. Non-Storm Water Discharge Training. The Defendant shall train  
8 all applicable employees about the Storm Water Permit's prohibition of non-storm  
9 water discharges so that employees know what non-storm water discharges are,  
10 how to detect them, and how to prevent them;

11 b. BMP Training. The Defendant shall train all employees responsible  
12 for BMP implementation and maintenance to ensure that BMPs are used  
13 effectively to prevent the exposure, discharge, and/or treatment of storm water at  
14 the Facility.

15 c. Sampling Training. The Defendant shall train all individuals  
16 collecting samples at the Facility pursuant to this Consent Decree or the Storm  
17 Water Permit on the proper sampling protocols, including chain of custody  
18 requirements, to ensure storm water and/or non-storm water samples are properly  
19 collected, stored, and submitted to a certified laboratory;

20 d. Visual Observation Training. The Defendant shall provide training  
21 to all individuals performing visual observations at the Facility pursuant to this  
22 Consent Decree and the Storm Water Permit.

23 36. Training shall be provided by a private consultant or a representative  
24 of Defendant familiar with the requirements of this Consent Decree and the Storm  
25 Water Permit, and shall be repeated as necessary to ensure that all such employees  
26 are familiar with the requirements of this Consent Decree, the Storm Water Permit,  
27 and the Facility's SWPPP. All new staff shall receive this training before  
28



1 assuming responsibilities for implementing the SWPPP or M&RP.

2 37. The Defendant shall maintain training records to document  
3 compliance with this Section E, and shall provide Waterkeeper with a copy of  
4 these records within fourteen (14) days of receipt of a written request.

5 **F. Compliance Monitoring and Reporting**

6 38. Annual Site Inspections. Up to three Waterkeeper representatives or  
7 consultants (including an attorney), may conduct one inspection ("Site Inspection")  
8 at the Facility each year that this Consent Decree is in effect. Site Inspections shall  
9 occur during normal business hours and Waterkeeper shall provide Defendant with  
10 as much notice as possible, but at least twenty-four (24) hours notice prior to a Site  
11 Inspection during wet weather, and seventy-two (72) hours notice prior to a Site  
12 Inspection during dry weather. Notice will be provided by telephone and electronic  
13 mail. During the Site Inspection, Defendant shall allow Waterkeeper and/or its  
14 representatives access to the Facility's SWPPP, M&RP, storm water monitoring  
15 records, and non-privileged reports and data related to storm water monitoring at  
16 the Facility. During the Wet Weather inspection, Plaintiff may request that  
17 Defendant collect a sample of storm water discharge from the facility's designated  
18 discharge points referenced in its SWPPP. Defendant shall collect the sample and  
19 provide a split sample to Waterkeeper. Waterkeeper's representative(s) may  
20 observe the split sample(s) being collected by Defendant's representative.  
21 Waterkeeper shall be permitted to take photographs or video recording during any  
22 Site Inspection pursuant to this paragraph. If Waterkeeper takes photographs  
23 and/or video recording, Waterkeeper shall provide Defendant with the photographs  
24 and/or video within fourteen (14) calendar days after the Site Inspection.  
25 Waterkeeper agrees that all individuals who will participate in a Site Inspection  
26 will execute a waiver and release prior to the Site Inspection.

27 39. Data Reporting. During the term of this Consent Decree, Defendant  
28



1 shall provide Waterkeeper with a copy of all Consent Decree and Permit  
 2 compliance and monitoring data, including inspection reports, related to the  
 3 Facility's coverage under the Storm Water Permit on a quarterly basis. The  
 4 Defendant shall provide Waterkeeper with all laboratory analyses related to  
 5 sampling at the Facility within ten (10) business days of the Defendant's receipt of  
 6 such information.

7 40. Document Provision. During the term of this Consent Decree,  
 8 Defendant shall copy Waterkeeper on all documents and communications related  
 9 to storm water at the Facility that are submitted to the Regional Board, the State  
 10 Board, and/or any State, local agency, county, or municipality. Such reports and  
 11 documents shall be provided to Waterkeeper concurrently as they are sent to the  
 12 agencies and/or municipalities. Any correspondence related to storm water  
 13 received from any regulatory agency, State or local agency, county, or  
 14 municipality shall be provided to Waterkeeper within ten (10) business days of  
 15 receipt by the Defendant.

16 **G. Environmental Project, Reimbursement of Litigation Fees and**  
 17 **Costs, and Stipulated Penalties**

18 41. Environmental Project. The Defendant agrees to make a payment of  
 19 twenty thousand dollars (\$20,000) within thirty (30) days of the Effective Date to  
 20 the Rose Foundation for a project related to water quality designed to analyze,  
 21 reduce, prevent, or otherwise mitigate the ecological and/or public health effects of  
 22 storm water and/or non-stormwater discharges into Los Angeles area waterbodies.  
 23 The payment shall be mailed via certified mail or overnight delivery to Tim Little,  
 24 Rose Foundation for Communities and the Environment, Attn: LA Waterkeeper v.  
 25 Bell Foundry Receiver at 1970 Broadway, Suite 600, Oakland, CA 94612-2218.  
 26 Defendant shall provide Waterkeeper with a copy of such payment.

27 42. Reimbursement of Plaintiffs' Fees and Costs. The Defendant agrees to  
 28

1 partially reimburse Plaintiff for its investigation fees and costs, consultant fees and  
2 costs, reasonable attorneys' fees, and other costs incurred as a result of  
3 investigating and filing the lawsuit, and negotiating a resolution of this matter in an  
4 amount totaling forty thousand dollars (\$40,000). Defendant shall pay the \$40,000  
5 within thirty (30) days of the Effective Date and shall be made payable to Law  
6 Office of Gideon Kracov and delivered by certified mail or overnight delivery at  
7 801 S. Grand Ave., 11<sup>th</sup> Floor, Los Angeles, CA 90017.

8       43. Compliance Monitoring Payment. Defendant shall pay a total of five  
9 thousand dollars (\$5,000) to compensate Waterkeeper for costs and fees to be  
10 incurred for monitoring Defendant's compliance with this Consent Decree.  
11 Payment shall be made within fifteen (15) days of the Effective Date payable to  
12 "Los Angeles Waterkeeper" addressed to: Los Angeles Waterkeeper, 120  
13 Broadway, Suite 105, Santa Monica, California 90401, and sent via courier or  
14 overnight delivery. Failure to submit payment as required under this paragraph will  
15 constitute a breach of the Consent Decree.

16       44. Action Plan Payment. If Defendant is required to submit an Action  
17 Plan to Waterkeeper pursuant to this Consent Decree, Defendant's submission of  
18 that Action Plan shall include an Action Plan Payment in the amount of three  
19 thousand, five hundred dollars (\$3,500) payable to "Los Angeles Waterkeeper"  
20 addressed to: Los Angeles Waterkeeper, 120 Broadway, Suite 105, Santa Monica,  
21 California 90401, and sent via courier or overnight delivery. Failure to submit  
22 payment as required under this paragraph will constitute a breach of the Consent  
23 Decree.

24       45. Stipulated Payment. The Defendant shall make a remediation payment  
25 of six hundred dollars (\$600) for each missed deadline included in this Consent  
26 Decree. Payments for a missed deadline shall be made for the restoration and/or  
27 improvement of the watershed in the area affected by the Defendant's alleged  
28



1 discharges and shall be awarded to The Rose Foundation, and mailed via certified  
 2 mail or overnight delivery per the terms described above in paragraph 41. The  
 3 Defendant agrees to make the stipulated payment within thirty (30) days of a  
 4 missed deadline, unless the Waterkeeper agreed in writing to an extension of that  
 5 deadline, and make the payment via overnight delivery or by certified mail. The  
 6 Defendant shall provide Waterkeeper with a copy of each such payment at the time  
 7 it is made.

#### 8 **H. Agency Review of Consent Decree**

9 46. Plaintiff shall submit this Consent Decree to the Federal Agencies,  
 10 within three (3) business days of the final signature of the Parties, for agency  
 11 review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-  
 12 five (45) calendar days after receipt by both agencies, as evidenced by written  
 13 acknowledgement of receipt by the agencies or the certified return receipts, copies  
 14 of which shall be provided to Defendant if requested. In the event that the Federal  
 15 Agencies object to entry of this Consent Decree, the Parties agree to meet and  
 16 confer to attempt to resolve the issue(s) raised by the Federal Agencies.

#### 17 **IV. DISPUTE RESOLUTION**

18 47. This Court shall retain jurisdiction over this matter for the purposes of  
 19 adjudicating all disputes among the Parties that may arise under the provisions of  
 20 this Consent Decree. The Court shall have the power to enforce this Consent  
 21 Decree with all available legal and equitable remedies, including contempt.

22 48. Meet and Confer. Either of the Settling Parties may invoke the  
 23 dispute resolution procedures of this Section by notifying the other party in writing  
 24 of the matter(s) in dispute and of the disputing party's proposal for resolution under  
 25 this Section. The Parties shall then meet and confer in an attempt to resolve the  
 26 dispute no later than fourteen (14) calendar days from the date of the notice.

27 49. If the Parties cannot resolve the dispute within 14 days after the meet  
 28

1 and confer described in paragraph 48, the Parties agree to request a settlement  
2 meeting before the Judge assigned to this action. In the event that the Parties  
3 cannot resolve the dispute by the conclusion of the settlement meeting with the  
4 Judge, the Parties agree to submit the dispute via motion to the District Court.

5 50. In resolving any dispute arising from this Consent Decree, the Court  
6 shall have discretion to award attorneys' fees and costs to either party. The  
7 relevant portions of the then-applicable Clean Water Act, Rule 11 of the Federal  
8 Rules of Civil Procedure, or any other legal authority, and applicable case law  
9 interpreting such provisions shall govern the allocation of fees and costs in  
10 connection with the resolution of any disputes before the District Court. Plaintiff  
11 and Defendant agree to file any waivers necessary for the Judge to preside over  
12 any settlement conference and motion practice.

13 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO**  
14 **SUE**

15 51. In consideration of the above, upon the Effective Date of this Consent  
16 Decree, the Parties hereby fully release, except for claims for Defendant's failure  
17 to comply with this Consent Decree and as expressly provided herein, each other  
18 and their respective successors, assigns, officers, agents, employees, and all  
19 persons, firms and corporations having an interest in them, from any and all  
20 alleged CWA violations claimed in the Complaint, up to and including the  
21 Termination Date of this Consent Decree.

22 52. Nothing in this Consent Decree limits or otherwise affects Plaintiff's  
23 right to address or take any position that it deems necessary or appropriate in any  
24 formal or informal proceeding before the Regional Board, EPA, or any other  
25 judicial or administrative body on any other matter relating to the Defendant.

26 53. Neither the Consent Decree nor any payment pursuant to the Consent  
27 Decree shall constitute or be construed as a finding, adjudication, or  
28



1 acknowledgement of any fact, law or liability, nor shall it be construed as an  
2 admission of violation of any law, rule, or regulation. The Defendant maintains and  
3 reserves all defenses they may have to any alleged violations that may be raised in  
4 the future.

5       54. Force Majeure. The Defendant shall notify Waterkeeper pursuant to  
6 the terms of this paragraph, when timely implementation of the requirements set  
7 forth in this Consent Decree becomes impossible, despite the timely good-faith  
8 efforts of the Defendant, due to circumstances beyond the reasonable control of the  
9 Defendant or its agents, and which could not have been reasonably foreseen and  
10 prevented by the exercise of due diligence by the Defendant. Any delays due to  
11 Defendant's failure to make timely and bona fide applications and to exercise  
12 diligent efforts to obtain necessary permits, or due to normal inclement weather,  
13 shall not, in any event, be considered to be circumstances beyond Defendant's  
14 control. In no circumstances shall a claim of inability to pay be considered Force  
15 Majeure.

16       a. If the Defendant claims impossibility, they shall notify Waterkeeper in  
17 writing within twenty-one (21) calendar days of the date that the Defendant first  
18 knew of the event or circumstance that caused or would cause a violation of this  
19 Consent Decree. The notice shall describe the reason for the nonperformance and  
20 specifically refer to this Section. It shall describe the anticipated length of time the  
21 delay may persist, the cause or causes of the delay, the measures taken or to be  
22 taken by the Defendant to prevent or minimize the delay, the schedule by which  
23 the measures will be implemented, and the anticipated date of compliance. The  
24 Defendant shall adopt all reasonable measures to avoid and minimize such delays.

25       b. The Parties shall meet and confer in good-faith concerning the non-  
26 performance and, where the Parties concur that performance was or is impossible,  
27 despite the timely good faith efforts of the Defendant, due to circumstances beyond  
28

1 the control of Defendant that could not have been reasonably foreseen and  
2 prevented by the exercise of due diligence by the Defendant, new deadlines shall  
3 be established.

4 c. If Waterkeeper disagrees with the Defendant's notice, or in the event  
5 that the Parties cannot timely agree on the terms of new performance deadlines or  
6 requirements, either party shall have the right to invoke the Dispute Resolution  
7 Procedure pursuant to Section IV. In such proceeding, the Defendant shall bear the  
8 burden of proving that any delay in performance of any requirement of this  
9 Consent Decree was caused or will be caused by force majeure and the extent of  
10 any delay attributable to such circumstances.

11 d. If applicable, Defendant shall diligently file and pursue required  
12 applications for permits, consents, and approvals for the structural BMPs  
13 described in this Consent Decree, and shall diligently pursue the procurement of  
14 contractors, labor and materials to complete all such BMPs by the deadlines set  
15 forth herein, and shall use reasonable good faith efforts to meet these deadlines.  
16 Defendant shall be excused from meeting the deadlines in this Consent Decree  
17 for a specific BMP if circumstances beyond the reasonable control of Defendant  
18 in obtaining any required governmental permits, consents, or approvals due to  
19 the permitting agency's actions or inactions or delays associated with the  
20 fabrication and/or construction of materials prevent the attainment of the  
21 deadline for a specific BMP. Such delays may be excused if all of the following  
22 requirements are met: 1) Defendant has notified Waterkeeper via email and first  
23 class mail within ten (10) days of first learning about the anticipated delay; and  
24 2) Defendant continues to exercise due diligence and reasonable good faith  
25 efforts in pursuing the permitting and implementation of the BMP in question  
26 and proposes a reasonable revised deadline. Any excused delay shall not excuse  
27 Defendant from implementing its other, unexcused obligations under this  
28



1 Consent Decree.

2 **VI. MISCELLANEOUS PROVISIONS**

3 55. Construction. The language in all parts of this Consent Decree shall  
4 be construed according to its plain and ordinary meaning, except as to those terms  
5 defined in the Storm Water Permit, the Clean Water Act, or specifically herein.

6 56. Choice of Law. The laws of the United States shall govern this  
7 Consent Decree.

8 57. Severability. In the event that any provision, paragraph, section, or  
9 sentence of this Consent Decree is held by a court to be unenforceable, the validity  
10 of the enforceable provisions shall not be adversely affected.

11 58. Correspondence. All notices required herein or any other  
12 correspondence pertaining to this Consent Decree shall be sent by regular mail or  
13 electronic mail as follows:

14 *If to Plaintiff:*

15 Arthur Pugsley  
16 Melissa Kelly  
17 Los Angeles Waterkeeper  
18 120 Broadway, Suite 105  
19 Santa Monica, CA 90401  
arthur@lawaterkeeper.org  
melissa@lawaterkeeper.org

20 *With copies to:*

21 Bruce Reznik  
22 Executive Director  
23 Los Angeles Waterkeeper  
bruce@lawaterkeeper.org

24 *If to Defendant:*

25 William W. Funderburk, Jr.  
26 Anna L. Le May  
27 CASTELLÓN & FUNDERBURK LLP  
28 811 Wilshire Boulevard, Suite 102.5

1 Los Angeles, CA 90017  
2 wfunderburk@candffirm.com  
3 alemay@candffirm.com

4 *With copies to:*  
5 Cesar Cappellini, President and CEO  
6 Edgar Cruz  
7 Bell Foundry Co.  
8 5310 Southern Avenue  
9 South Gate, CA 90280  
10 ccappe@bfco.com  
11 ecruz@bfco.com

12 Notifications of communications shall be deemed submitted three (3) days  
13 after the date that they are postmarked and sent by first-class mail, or immediately  
14 after acknowledgement of receipt via email by the receiving party. Any change of  
15 address or addresses shall be communicated in the manner described above for  
16 giving notices.

17 59. Effect of Consent Decree. Plaintiff does not, by its consent to this  
18 Consent Decree, warrant or aver in any manner that the Defendant's compliance  
19 with this Consent Decree will constitute or result in compliance with any federal or  
20 state law or regulation. Nothing in this Consent Decree shall be construed to affect  
21 or limit in any way the obligation of the Defendant to comply with all federal,  
22 state, and local laws and regulations governing any activity required by this  
23 Consent Decree.

24 60. Counterparts. This Consent Decree may be executed in any number  
25 of counterparts, all of which together shall constitute one original document.  
26 Telecopy and/or facsimile copies of original signature shall be deemed to be  
27 originally executed counterparts of this Consent Decree.

28 61. Modification of the Consent Decree. This Consent Decree, and any  
provisions herein, may not be changed, waived, discharged, or terminated unless  
by a written instrument, signed by the Parties.



63. Integration Clause. This is an integrated Consent Decree. This Consent Decree is intended to be a full and complete statement of the terms of the agreement between the parties and expressly supersedes any and all prior oral or written agreements, covenants, representations, and warranties (express or implied) concerning the subject matter of this Consent Decree.

64. Authority. The undersigned representatives for Plaintiff and Defendant each certify that s/he is fully authorized by the party whom s/he represents to enter into the terms and conditions of this Consent Decree.

65. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

66. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the Defendant does not admit liability for any purpose as to any allegation or matter arising out of this Action.

IN WITNESS WHEREOF, the undersigned have executed this [Proposed] Consent Decree as of the date(s) set forth below.

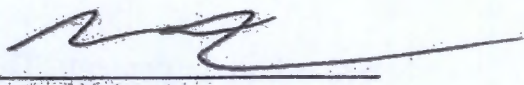
LOS ANGELES WATERKEEPER

Dated: 28 March 2017

by: Melissa Kelly  
Melissa Kelly  
Attorney for Plaintiff  
LA Waterkeeper

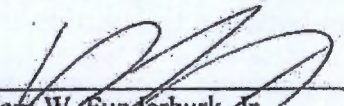
LOS ANGELES WATERKEEPER

1 Dated: 28 March 2017

by:   
Bruce Reznik  
Executive Director  
LA Waterkeeper

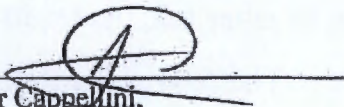
4 CASTELLON & FUNDERBURK LLP

6 Dated: 27 March 2017

by:   
William W. Funderburk, Jr.  
Attorneys for Defendant  
Bell Foundry Co.

9 BELL FOUNDRY CO.

11 Dated: 27 March 2017

by:   
Cesar Cappellini,  
President and CEO

15 **IT IS SO ORDERED:**

16 Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable John F. Walter  
DISTRICT COURT JUDGE  
CENTRAL DISTRICT OF CALIFORNIA



**EXHIBIT A**

